



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31497965

Date: JUL. 18, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a chief executive officer of a beverage company, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he had received a one-time achievement (a major, internationally recognized award) or that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is the founder and chief executive officer (CEO) of [REDACTED] a U.S. beverage company manufacturing and distributing energy drinks. He states that he has extraordinary ability as an entrepreneur who is an “expert on Caribbean trade, with specialized knowledge in the coconut industry.” He has served in various roles as a trade advisor, consultant and ambassador. The Petitioner intends to continue operating his business in the United States and claims it will substantially benefit the U.S. economically, as well as demonstrate diversity as an ethnic minority entrepreneur and develop trade opportunities between the U.S. and the Caribbean.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed that he met three of these criteria:

- (i), Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (iii), Published materials about him in major trade or professional publications or other major media; and
- (viii), Performing in leading or critical roles for organizations or establishments with a distinguished reputation.

The Director issued a request for evidence (RFE), notifying the Petitioner that the evidence in the record was not sufficient to establish that he met any of the claimed criteria. The Director allowed the Petitioner an opportunity to submit additional evidence in attempt to demonstrate that he satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In response to the RFE, the Petitioner submitted additional evidence and again asserted that he meets the claimed criteria above, 8 C.F.R. § 204.5(h)(3)(i), (iii) and (viii).

In denying the petition, the Director determined that the Petitioner demonstrated that he met one of the ten criteria. Specifically, the Director concluded that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(iii), with published materials about the Petitioner in major trade or professional publications or other major media. While we agree with the Director that the Petitioner has met this criterion, we conclude that the record does not demonstrate that the Petitioner meets at least two additional criteria. Therefore, he does not meet the threshold for a final merits determination on whether he can establish that he is an individual of extraordinary ability in the field of Caribbean trade, the coconut industry and entrepreneurship.

A. Evidentiary Criteria

On appeal, the Petitioner maintains that he satisfies at least two additional alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, he maintains his prior claim that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (viii), for lesser nationally or internationally recognized awards, and performing in a leading or critical role for organizations with distinguished reputations. For the reasons discussed below, we find that the Petitioner has not established that he meets at least two more categories of evidence.

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner asserts that he meets this criterion based on four awards:

- First prize award for Entrepreneurial Spirit from the [redacted] 2012;
- First prize award at the [redacted] 2015;
- Second place winner of the [redacted] 2019; and
- [redacted] Colombia, 2019.

The Director concluded that the Petitioner did not establish that any of the awards were national or international in scope or demonstrated recognition for excellence in the field of endeavor.

On appeal, the Petitioner states that the Director incorrectly analyzed his field of expertise as being a CEO in the beverage industry and clarifies that each award was given based on his expertise in entrepreneurship.

The record includes evidence that the Petitioner was awarded first prize for Entrepreneurial Spirit in the 2012 [redacted]. Evidence in the record describes [redacted] as a private initiative promoting entrepreneurship in Colombia. The Petitioner states that he was awarded a monetary prize based on his innovation of a “zero-residue business model ... bottling fresh coconut water, making soaps with the flesh/coconut milk, and using the husks as natural fertilizers.” A letter from the entrepreneurship manager of [redacted] states that the Petitioner was one of 5,000 candidates. However, the evidence in the record does not state the criteria used to grant the award or explain the national or international significance of the award. On appeal, the Petitioner states that this award was national in scope and was related to his field of expertise in entrepreneurship.

However, he does not provide any additional evidence to establish that this award meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

The record includes evidence that the Petitioner was awarded first prize at the [redacted] [redacted] in 2015. The Petitioner states that he was awarded a monetary prize “as eco entrepreneur in the business category ‘water, alternative energies and handling of solid residues’ for [his] rainwater bottling pilot.” The record includes a certificate and a photograph of a trophy, as well as other information in a foreign language without an English translation.¹ On appeal, the Petitioner states that the award “may have been at a lower level ... but it had the backing of an international organization: the [redacted].” The evidence in the record does not provide information about the award, including the criteria used for judging, the national or international significance of the award, or the number of awardees or prize recipients. Nor does the evidence demonstrate the support of an international organization as the Petitioner asserts. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner does not provide any additional evidence to establish that this award meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

The record includes evidence that the Petitioner was a second-place winner of the [redacted] [redacted] in 2019. The Petitioner states that [redacted] in Texas and northeastern Mexico. He states that he was awarded a monetary prize for his beverage line, as well as a five-year exclusivity contract and recognition from the Governor of Texas, the Texas House of Representatives and the Commissioner of the Texas Department of Agriculture. The record includes copies of certificates for the award and evidence that the Petitioner’s business received the monetary award and contract with the supermarket. The record also includes a letter from the [redacted] sourcing team stating that the Petitioner was selected as one of 20 finalists out of 842 submissions. On appeal, the Petitioner states that the award “may have been at a lower level (U.S. State – Texas), but this award was awarded by a major U.S. retailer.” The evidence in the record does not provide information about the award, including the criteria used for judging, the national or international significance of the award, or the number of awardees or prize recipients. Nor does the evidence include information about [redacted] to support the Petitioner’s assertion that it is a major U.S. retailer. The Petitioner does not provide any additional evidence to establish that this award meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

The record includes evidence that the Petitioner was a participant on [redacted] Colombia in 2019. The Petitioner states that [redacted] [redacted] He states that he secured an investment deal on the show for his energy drink, [redacted]. The record includes photographs of the Petitioner on the show with links to the video. On appeal, the Petitioner states that his [redacted] prize was national in scope and is related to his field of expertise in entrepreneurship.

¹ Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

The evidence in the record does not establish that the Petitioner is the recipient of a prize or award based on his appearance on [REDACTED]. Nor does the record document the criteria used for judging, the national or international significance of the award, or the number of awardees or prize recipients. The record does not include evidence such as a statement from the show's producers documenting that the Petitioner was the recipient of an award for excellence. Nor does the record include a statement from the Petitioner's [REDACTED] explaining why he chose to invest in the Petitioner's product or other evidence explaining how this investment has national or international significance. The Petitioner does not provide any additional evidence to establish that this award meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

For these reasons, the Petitioner has not submitted documentation that satisfies this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

To qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. When evaluating whether a role is leading, we look at whether the evidence establishes that the person is or was a leader within the organization, or a department or division thereof. A title, with appropriate matching duties, can help to establish that a role is or was leading. For a critical role, we look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. *6 USCIS Policy Manual F.2(B)(1)*, <https://www.uscis.gov/policy-manual>.

To support that an organization has a distinguished reputation, the relative size or longevity of an organization is considered together with other relevant information, such as the scale of its customer base or relevant media coverage. "Merriam-Webster's online dictionary defines 'distinguished' as 'marked by eminence, distinction, or excellence' or 'befitting an eminent person.'" *Id.*

The Petitioner points to the following roles as evidence that he meets this criterion:

- Trade advisor with the [REDACTED]
- Ambassador of the [REDACTED] and [REDACTED]
- Consultant with the [REDACTED]

The Director's analysis of this criterion focuses on evidence in the record relating to the Petitioner's business, [REDACTED] and his role as CEO. The Director concluded that, although the Petitioner established that he performs in a leading role in the company, the evidence did not establish that the company has a distinguished reputation. However, the Director did not consider other evidence in the record, including the Petitioner's cover letter submitted with the initial filing and his response to the RFE, that the Petitioner's claim under this criterion was not based on his role as CEO of his company. Rather, the record demonstrates that the Petitioner provided evidence of his roles with [REDACTED] and the [REDACTED] in support of this criterion.

The record includes a letter dated March 2011 from the general secretary of the [] attesting to the Petitioner's role as "Advisor in the Directorate of Trade and External Economic Relations Department at [] for the past three years." The letter describes the [] as "an international organization based in [] which serves twenty-five member states and three associate members, as well as observer countries through consultation, cooperation and concerted action in the areas of trade, transport, sustainable tourism and natural disaster risk reduction." On appeal, the Petitioner states that he was nominated to the position by the Colombian government based on his merit and expertise in Caribbean trade. He states that during this tenure, he led events to promote trade, including an event that generated over \$1.3 million in business. The record includes a report of this event and newspaper articles listing the Petitioner as an attendee. However, the evidence in the record does not describe the Petitioner's job duties as trade advisor for []. Nor does the evidence support the Petitioner's assertion that he was nominated by the Colombian government or led events promoting trade. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has not established that his role as trade advisor with the [] meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner states that he was named as the ambassador and sole representative of his area for the 2020 []. He describes the event as an annual summit attended by "senior government representatives, policy makers, and intergovernmental organizations" to "connect islands around the world and share ideas, best practices and solutions." The Petitioner states that through his participation in the summit he responded to "spontaneous questions from participants about or in relation to [his] archipelago." The record includes a copy of an email addressed to the Petitioner identifying him as the [] ambassador for the []. However, the record does not include any other evidence related to the [] or the Petitioner's role as ambassador. The Petitioner has not established that his role as ambassador of the [] meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner also states that he was solicited to fill the role of consultant with the United Nations [] in 2021 based on his expertise in the coconut industry and the U.S. market. Evidence in the record describes the []. The record includes approved contracts for services between the Petitioner and the United Nations appointing him for limited service as a contractor with the [] from September 2, 2021 to March 31, 2022. The record also includes a job description for the role, listing the Petitioner's responsibilities as conducting market and distribution channel research for projects on coconut in the United States, providing recommendations for campaigns to raise awareness of coconut agriculture, and delivering presentations for online events. However, the record does not include evidence demonstrating that the Petitioner's role with the [] was leading or critical. The plain language of the job description does not indicate that the role of consultant is a leader within any department or division of the []. The Petitioner has not submitted evidence of his contributions as a consultant or established that they are of significant importance to [] activities. The Petitioner has not established that his role as consultant with the [] meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The Director erred in analyzing other evidence in the record not specifically intended to establish that the Petitioner meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii), in performing in leading or critical roles for organizations or establishments with a distinguished reputation. However, upon review of

the record in its entirety, we conclude that the Petitioner's intended evidence, including the Petitioner's statements on appeal, are insufficient to establish that he meets this criterion.

Although the Director erred in the analysis of the evidence in the record relating to 8 C.F.R. § 204.5(h)(3)(viii), we need not remand the matter for further consideration because the Petitioner has not overcome the basis for denial regarding the other claimed criterion. As such, he has only met one criteria.

The Petitioner has not demonstrated that he satisfies at least three of the initial evidentiary criteria. Therefore, the Petitioner has not established eligibility for classification as an individual of extraordinary ability.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner is not eligible because he has not submitted the required initial evidence of either a one-time achievement or documents that he meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.²

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his accomplishments as an entrepreneur and expert in Caribbean trade and the coconut industry is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

The Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

² This review included consideration of testimonial evidence that was not claimed to satisfy any particular regulatory criterion, such as letters of recommendation and evidence of business grants supporting the Petitioner's company.